Defendants pleaded privilege, and the jury found there was no *malice* in the publication to M. The trial court ruled that "the publication to the clerks was not privileged, even if the writing to" M was, and judgment was entered for the plaintiff. On appeal by defendants, *held*: the publication to M was *prima facie* privileged, and this privilege, in the absence of malice, is not lost by the publications to the clerks. *Roff* v. *British and French Chemical Co.*, (Court of Appeal, K. B. D., Nov. 1918), 87 L. J. R. (K. B.), 996.

SWINFEN EADY, M. R., held that since both defendants and M had a common interest in the selection of an arbitrator, the occasion was *prima facie* privileged, unless there was malice to rebut the *prima facie* protection, and the jury had negatived any malice. The other judges agreed. It was further argued that the mere fact that a defamatory communication, *prima facie* privileged, is communicated to a third person having no interest, is in excess of the privilege and destroys it. But the court held otherwise, relying on the cases of *Pullman* v. *Hill*, (1891), 1 Q. B. 524; *Edmondson* v. *Birch*, (1907), 1 K. B. 371, and others reviewed in note in 17 MICH. L. REV. 187.

All the judges held that the action was not for a publication to the clerks, but only to M, and hence the trial justice's instructions that the publication to the clerks was not privileged, was not applicable and was misleading. They seemed to think that a separate action might possibly have been maintained for the publication to the clerks. This matter is covered in the note in the MICHIGAN LAW REVIEW above referred to.

PUBLIC UTILITIES OPERATING AFTER EXPIRATION OF FRANCHISE—ORDINANCE FIXING RATES.—A street railway company furnished the exclusive service to defendant city. On 150 miles of the lines the franchises had expired, 65 miles were under a "three-cent franchise," and 55 miles of disconnected sections of tracks in outlying streets were under "five-cent franchises," which had not yet expired. The city on August 9, 1918, passed an ordinance in terms amendable or repealable at any time, limiting fares that might be charged on franchise lines to franchise rates, and on non-franchise lines to a maximum of five cents. The ordinance expressly provided that it should not be construed to impair the obligation of any valid contract. The Supreme Court of the United States found the enforcement of the ordinance on the averments of the bill, which for the purposes of the hearing must be taken to be true, would result in a deficit to the company. The rates fixed did not provide a reasonable return, and therefore deny to the company due process of law. The District Court should have granted a temporary injunction and proceeded to a hearing and determination of the case. *Detroit United Railway* v. *City of Detroit*, United States Supreme Court, No. 666, January 13, 1919.

Little need be added to what was said on the *Denver Water Case*, 246 U. S. 178, in 16 MICH. L. REV. 438. The case simply follows that case, and from this three justices dissent, as they did in that case. The only difference between the two seems to be that in the Detroit case the company has certain unexpired franchises, so that the city is not free to operate a complete system of its own by driving the company from the streets, and the company is on the non-franchise streets only by sufferance. The court has constructed a

situation of the man and the bear at grips, and neither can let go because each has to have the other. Meantime the bear does not seem to be suffering, since the courts forbid the man to do anything to kill him, or even to prevent his having plenty of sustenance, provided always he will not be too hard on the man. The court will umpire the contest, but it seems to remain a perpetual draw, which worries the city but is at most a slight annoyance to the company.

RAILROADS—INJURIES AT CROSSING—STATIONARY GONG—CONTRIBUTORY NEGLIGENCE—QUESTION FOR THE JURY.—The plaintiff Guest and his automobile were injured in a collision with the defendant's passenger train at a crossing. There was evidence tending to show that the automatic stationary electric gong failed to ring as the train approached; that the plaintiff failed to stop, look, or listen before attempting to cross; that a signboard partially obstructed his view of the track. *Held,* that the question of contributory negligence was for the jury even though the plaintiff failed to stop, look and listen—if the automatic gong failed to ring. *Bush* v. *Brewer et al.,* (Ark. 1918), 206 S. W. 322.

The failure to sound the stationary gong created an exception to the general rule that where a traveler does not use his senses to guard his own safety the question is purely one of law for the court. It became a question for the jury to decide whether the plaintiff was actually negligent in failing to look and listen for approaching trains while behind the signboard, since the silence was in a measure an invitation to the public to cross. The *dissenting* views admitted that the opening of a gate operated by a flagman is an invitation to cross but insisted that there is no such invitation when a gong fails to ring since such contrivances are known to be out of repair frequently. The courts are by no means agreed as to the effect of a reliance on the absence of customary warning signals situated at crossings. The principal case is supported by *Tobias* v. *Railroad Co.,* 103 Mich. 330, where the question was left to the jury even though it was clear from the evidence that the plaintiff could have seen the train had he looked. But other cases hold that the question is still for the court if the traveler has failed to stop, look and listen; the failure of the automatic gong to ring does not justify any relaxation of vigilance. *Conkling* v. *Erie R. R. Co.,* 63 N. J. L. 338; *Jacobs* v. *Railway Co.* 97 Kansas 247; *McSweeney* v. *Erie R. R. Co.,* 87 N. Y. Supp. 836. The conflict appears also among the gate cases. In *Koch* v. *Southern Cal. Ry. Co.,* 148 Cal. 677 the court declared that the traveler could rely on the raising of the gates but that he had to look and listen nevertheless; otherwise he could not recover as a matter of law—"he must show more as to his conduct than that he so relied." The dissenting opinion in the California case cited many cases to prove that the raising of the gates was an invitation to cross and that this was enough to make a jury question. *Geoffroy* v. *New York N. H. & H. R. Co.,* (R. I. 1918), 104 Atl. 883 decided last month, is in accord with the theory of the principal case but it adds a qualification which the principal case did not have to consider. The Rhode Island court admitted that the opening of the gates brought the question to the jury even though the plaintiff did not stop, look, and listen where it was possible that he exercised due care notwithstanding